

# The Advisor

*The C&P Advisors companies are pleased to bring our latest newsletter to you. If you have questions on any of these topics, contact your C&P Advisor or the individuals listed.*

*January 2008*

## Does Your Retirement Plan Require an Audit?

The general rule for retirement plans is that plans with **100 or more participants** at the **beginning** of the plan year must be audited by an independent qualified public accountant. Note that when participants are counted in a 401(k) plan, **all eligible participants are counted -- even if they are not participating** in the plan.

For retirement plans that have no more than 20 participants over the 100 threshold, there are special rules that may avoid the audit requirement if the plan had fewer than 100 participants in the prior year. Also, there are provisions that plan sponsors can use to “cash out” small account balances of former employees in order to reduce a plan’s participant count.

When selecting an accounting firm to audit your retirement plan, it is important to choose a firm that specializes in auditing employee benefit plans. Ciuni & Panichi has been auditing employee benefit plans of all types and sizes for over 20 years. Please contact us if you need help in determining whether your plan requires an audit.



Jeff Spencer, CPA  
Principal

## Late Remittance of Employee Contributions

If you are audited by the Department of Labor (DOL), expect the field agent to review whether the plan sponsor has timely remitted all employee contributions to the plan’s trust. The basic rule is that employee contributions be remitted “as of the **earliest date** on which such contributions can reasonably be segregated from the employer’s general assets.” If a company withholds employee contributions weekly but remits them monthly, for example, then this can create a problem.

In the event you have late remittances of employee contributions, it is recommended that you take corrective action as soon as possible and document the entire process in the event of a DOL audit. The DOL will want to know how the lost earnings were calculated that are owed to the plan participants. Plan sponsors are required to make plan participants “**whole**” by contributing to the plan any earnings lost as a result of the late remittances.



John Rose, CPA  
Partner

Also, if employee contributions are late, they are required to be reported in the plan’s audited financial statements (if audited financial statements are required), as well as in the annual Form 5500 filing. In addition, the plan sponsor is required to file a Form 5330 with the IRS to pay an excise tax for the late remittance.

## Reducing Personal Liability of Plan Fiduciaries



Fiduciaries that do not follow the principles of conduct required by the Employee Retirement Income Security Act (ERISA) may be **personally** liable to restore any losses to the employee benefit plan, or to restore any profits made through improper use of plan assets. Plan fiduciaries include such parties as plan trustees, plan administrators, and members of a plan's investment committee.

The primary responsibility of fiduciaries is to run the plan solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and paying plan expenses. Fiduciaries must act prudently and must diversify the plan's investments in order to minimize the risk of large losses. In addition, they must follow the terms of plan documents to the extent that the plan terms are consistent with ERISA. They also must avoid conflicts of interest by preventing transactions on behalf of the plan that benefit parties related to the plan, such as other fiduciaries, service providers or the plan sponsor.

Legal action may result in serious sanctions against fiduciaries that breach their duties under ERISA, including their removal from service. Please contact us to see how we can help reduce your exposure to personal fiduciary liability with respect to your employee benefit plans.

## 2008 Benefit Plan Limits

Listed below are some of the most commonly used employee benefit plan limitations for 2008:

<b>401(k) plan elective deferral</b>	<b>\$ 15,500</b>
<b>403(b) plan salary reduction contribution</b>	<b>15,500</b>
<b>401(k) plan and 403(b) plan catch-up contribution</b>	<b>5,000</b>
<b>SIMPLE plan elective contribution</b>	<b>10,500</b>
<b>SIMPLE plan catch-up contribution</b>	<b>2,500</b>
<b>Annual compensation limit</b>	<b>230,000</b>
<b>415(b) limit on benefits under a defined benefit plan</b>	<b>185,000</b>
<b>415(c) limit on contributions to a defined contribution plan</b>	<b>46,000</b>
<b>Highly compensated employee threshold</b>	<b>105,000</b>
<b>Key employee threshold</b>	<b>150,000</b>

These materials are not intended to provide legal or tax advice concerning the specific facts of any particular taxpayer. Taxpayers should consult with their own tax advisors as to the application of the tax laws to their personal circumstances.

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